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**MARSHALL, DENNEHEY, WARNER,
COLEMAN & GOGGIN**

BY: John P. Gonzales, Esquire
Identification Number: # 71265
One Montgomery Plaza, Suite 1002
Norristown, PA 19401
(610) 292-4470

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

DAVID C. JOHNSON, Pro Se

:

: No.: 02-CV-4874

v.

:

:

CHESTER COUNTY PRISON, SGT. RAGERI,
SGT. HOLMES, SGT. McMILLAN and
CO SADLER

:

:

ORDER

AND NOW, this day of , 2004, upon consideration of the Motion for Sanctions by Defendants and any response hereto, it is hereby ORDERED and DECREED that due to Plaintiff's conduct in flagrantly refusing to answer questions at a duly noticed deposition, sanctions are entered in favor of Defendants and against Plaintiff and Plaintiff's Complaint is DISMISSED with prejudice. It is further ORDERED that Mr. Johnson shall pay \$ for payment of the fees and costs incurred by defendants to attend his deposition on November 7, 2003 within thirty (30) days of the date of this Order.

BY THE COURT:

J.

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SGT. HOLMES, SGT. McMILLAN and	:	
CO SADLER	:	

**DEFENDANTS, CHESTER COUNTY PRISON, SGT. RAGERI, SGT. HOLMES, SGT. McMILLIAM
AND C.O. SADLER'S RENEWED MOTION FOR SANCTIONS**

Defendants, Chester County Prison, Sgt. Ruggieri, Sgt. Holmes, Sgt. McMillian and CO Sadler, by an through their undersigned counsel, Marshall, Dennehey, Warner, Coleman & Goggin and John P. Gonzales, Esquire, files this Renewed Motion for Sanctions and avers as follows:

1. Plaintiff commenced this action by filing a Complaint with the United States District Court for the Eastern District of Pennsylvania on or about August 16, 2002.
2. Plaintiff's Pro Se Complaint asserts claims for violations of his Civil Rights under 42 U.S.C. §1983 against Moving Defendants, Chester County Prison, Sgt. Ruggieri, Sgt. Holmes, Sgt. McMillian and CO Sadler. Plaintiff was incarcerated at SCI-Greensburg, R.D. 10, Box 10, Greensburg, PA 15601. He is currently incarcerated at the Chester County Prison, 501 S. Wawaset Rd., West Chester, PA 19382.
3. In compliance with Fed.R.Civ.P. 38 (2), Defendants filed a Motion to Permit the Deposition of Plaintiff. The Court issued an Order on July 21, 2003 which granted the Motion and expressly permitted the deposition of Plaintiff, David C. Johnson.

4. Defendants, in compliance with the Order, attempted to depose Mr. Johnson at the Chester County Prison on November 7, 2003.

5. Mr. Johnson appeared to his deposition, however, he refused to answer any questions in violation of Fed.R.Civ.P. 30.

6. Mr. Johnson's refusal to comply with Federal Rules of Civil Procedure, forced defendants to incur the expense of traveling to the Chester County Prison to attend the deposition, as well as the retention of a court reporter to transcribe Mr. Johnson's testimony.

7. Defense counsel is mindful of Mr. Johnson's status as a pro se litigant. In fact, defense counsel took the time to explain the Federal Rules pertaining to depositions and the consequences of Mr. Johnson's failure to cooperate on the record. Mr. Johnson was fully apprised of the consequences of his decision not to cooperate. Mr. Johnson's refusal to answer questions constituted nothing less than a flagrant violation of the Federal Rules of Civil Procedure and serves no purpose other than to harass defendants and waste the time of both counsel and this Court.

8. Fed.R.Civ.P. 37 permits a party to seek sanctions from a Court based upon a party's failure to comply with the Federal Rules concerning discovery.

9. On November 17, 2003, Defendants' filed a Motion for Sanctions against Plaintiff for refusing to answer questions at his deposition and requested that the Court dismiss the case with prejudice.

10. On November 20, 2003, the Court issued an Order which stated that due to Plaintiff's conduct in flagrantly refusing to answer questions at a duly noticed deposition sanctions are entered in favor of Defendants and against Plaintiff and Plaintiff's Complaint is dismissed without prejudice for twenty (20) days in order for Plaintiff to reconsider his position of refusal. (A copy of the Court's November 20th Order is attached hereto as Exhibit "A")

11. As of this date, Plaintiff has not contacted defense counsel to reschedule his deposition. In fact Defendants have received no documentation from Plaintiff with regard to the Court's Order.

12. Mr. Johnson's actions merit nothing less than the dismissal of his case with prejudice.

13. Due to Plaintiff's refusal to comply with the Court's Order, Defendants seek an Order from the Court imposing sanctions upon Plaintiff dismissing his case and any and all claims arising from his Complaint with prejudice.

WHEREFORE, Defendants respectfully request this Honorable Court dismiss Plaintiff's Complaint with prejudice.

MARSHALL, DENNEHEY, WARNER,
COLEMAN & GOGGIN

BY: JG847
JOHN P. GONZALES, ESQUIRE
Attorney for Defendants

DATE: 2/23/04

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FOR THE EASTERN DISTRICT OF PENNSYLVANIA

DAVID C. JOHNSON, Pro Se

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CHESTER COUNTY PRISON, SGT. RAGERI,
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CERTIFICATE OF SERVICE

I, JOHN P. GONZALES, ESQUIRE, being duly sworn according to law, hereby certify that Defendants' Renewed Motion for Sanctions was forwarded to all counsel of record on the below listed date and was sent via first class mail, postage prepaid to the last known address of other parties or their representatives.

David C. Johnson
FB 9445
GBG
R.D. #10, Box 10
Greensburg, PA 15601

MARSHALL, DENNEHEY, WARNER,
COLEMAN & GOGGIN

BY: JG847
JOHN P. GONZALES, ESQUIRE
Attorney for Defendants

DATE: 2/23/04

